Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF CUSTOMS and the **BUREAU OF CUSTOMS** Petitioners,	**CTA EB Case No. 1142** (CTA Case No. 8409)
- versus -	Members: DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *JJ.*
DOLE PHILIPPINES, INC. Respondent.	Promulgated: JAN 05 2015 3:45 p.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review,[1] filed on April 4, 2014, by petitioners-Commissioner of Customs and the Bureau of Customs, seeking the reversal of the December 18, 2013 Decision[2] (Assailed Decision) and February 26, 2014 Resolution[3] (Assailed Resolution) of the Court of Tax Appeals (CTA) First Division in CTA Case No. 8409, entitled *"Dole Philippines, Inc. vs. Commissioner of Customs and the Bureau of Customs."*

Petitioner Commissioner of Customs (Commissioner) heads the Bureau of Customs, while petitioner Bureau of Customs is the government agency responsible for the collection of duties and taxes from importation, with office address at Port Area, South Harbor, Manila. They may be served with judicial processes through their

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[1] *En Banc* Rollo, pp. 7-27.
[2] Annex "A" to the Petition for Review, Ibid, pp. 29-40.
[3] Annex "B" to the Petition for Review, Id, pp. 42-44.

statutory counsel, the OSG, at 134 Amorsolo Street, Legaspi Village, Makati City.[4]

Respondent Dole Philippines Inc., a corporation duly organized and existing under Philippine laws, is engaged in the manufacture of high quality fresh fruits, fresh vegetables and fresh cut flowers with growing line of quality packaged goods. Its factory and office is located at 9504 Polomonok, Sarangani Economic Development Zone, South Cotobato.[5]

The factual antecedents[6] of the case as found by the CTA First Division are as follows:

> "On March 27, 2009, petitioner [respondent herein] filed a claim for refund with the District Collector, Port of Manila, Bureau of Customs requesting for a tax refund in the amount of Php6,444,827.45 allegedly representing customs duties on petroleum products which it purchased from Petron Corporation covering the period September 2007 to March 2008 pursuant to the provisions of Section 18 of Presidential Decree (PD) No. 66, as amended, in relation to *Commissioner of Customs v. Philippine Phosphate Fertilizer Corporation.*
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> On November 18, 2010, the Officer-in-Charge of the Port of Manila ('POM') denied petitioner's [respondent herein] claim for refund through a Memorandum, the dispositive portion of which reads:
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>> 'Accordingly, in light of the foregoing premises, this Office opines that the request for refund of DOLE Philippines, Inc., in the amount of Six Million Four Hundred Forty Four Thousand Eight Hundred Twenty Seven Pesos and Forty Five Centavos (Php6,444,827.45) cannot favorably be acted upon since claimant miserably failed to establish that the instant claim represents the proportionate amount of the customs duties and taxes paid by Petron Corporation on the importation of Arab Light and/or Arab Superlight, which was actually used in the manufacture of the Bunker Fuel Oil (BFO)

[4] The Parties, Decision, Annex "A" to the Petition for Review, Id, p. 30.
[5] The Parties, Decision, Annex "A" to the Petition for Review, Id, p. 29.
[6] The Facts, Decision, Annex "A" to the Petition for Review, Id, pp. 30-34.

petroleum product which was subsequently delivered to DOLE PHILIPPINES, INC.'

On December 9, 2010, petitioner [respondent herein] filed an appeal letter with the Commissioner, copy furnished the Port of Manila (POM) District Collector ('District Collector') and the Tax Credit Committee.

In a 1st Indorsement dated December 12, 2010, respondent Commissioner [petitioner herein] forwarded petitioner's [respondent herein] December 9, 2010 letter to the District Collector, to quote:

> 'Respectfully forwarded to the District Collector of Customs, Port of Manila, the within letter dated December 9, 2010 of Atty. Gil A. Valera, appealing to the Tax Credit Committee the Decision/s of the District Collector, Port of Manila, denying the request for refund of the following:
>
> 1. Philippine Associated Smelting and Refining Corporation (PASAR)
> 2. ST Microelectronics
> 3. Toshiba Storage Device
> 4. Dole Philippines, Inc.
>
> With the directive to submit to the Committee within five (5) days from receipt hereof the entire docket of the claim/s and the written comment/opposition of that Port on the instant appeal taking into consideration the time limit imposed by RA 9485 otherwise known as the Anti-Red Tape Act of 2007 within which this Office may act on the issues raised before it.
>
> For your immediate action.'

Sometime in January 2011, Atty. Liza Sebastian- Chief of the Tax Credit Committee Secretariat – advised the petitioner [respondent herein] that there is an appeal fee to be paid. Thus, on January 18, 2011, petitioner [respondent herein] paid Three Thousand Pesos (Php3,000.00) to the Bureau of Customs ('BOC') as evidenced by BOC O.R. No. 01815230910.

Meanwhile, in an Indorsement dated February 11, 2011, Chief Accountant Alfredo A. Palma of the Accounting Division, Financial Management Office, returned to the Head of the Tax Credit Secretariat the documents bearing the request of petitioner with the verification that the amount of Php6,444,827.45 being claim is correct based on the attached documents and computations. Records also disclosed that certain Emilio L. Jacinto, Chief Accountant, Revenue Accounting Division of the Bureau of Customs, made a computation of petitioner's [respondent herein] claim and validated the amount of Php6,444,826.55 (sic), as the amount for refund.

In a letter dated March 2, 2011, petitioner [respondent herein] through its representative wrote Atty. Vener Baquiran, member of TCC Secretariat and Chief of Staff of DepCom Revenue Collection Monitoring Group of the Bureau of Customs, complaining that its refund application has not been acted upon with dispatch; hence, it was appealing for the signature of the TCC Secretariat Disposition Form. Petitioner [respondent herein] made another follow-up with the Bureau of Customs in its letter dated June 15, 2011.

In a letter dated September 22, 2011, petitioner [respondent herein] wrote Commissioner Ruffy Biazon asking that it be treated similarly like Pan Century Surfactants Inc., whose application for refund was granted on September 15, 2011 in a decision issued by former Commissioner Alvarez.

On November 25, 2011, respondent Commissioner [petitioner herein] denied petitioner's [respondent herein] claim for refund, to quote:

> 'DISCUSSION
> The pivotal issue to be resolved in the instant case is whether or not the appeal was perfected.
>
> We rule in the negative.
>
> RECOMMENDATION:
> DISMISS the appeal for non-perfection thereof.'

The assailed decision dismissed the appeal of petitioner [respondent herein] for failure to perfect the appeal within the reglementary period. Respondent Commissioner [petitioner herein] stated in the assailed decision that petitioner [respondent herein] was not able to file a Notice of Appeal with the Office of the District Collector pursuant to Section 2313 of the Tariff and Customs Code of the Philippines (TCCP), as amended, as petitioner [respondent herein] merely filed a letter of appeal before his office, copy furnished the Office of the District Collector; thus, technically speaking, no Notice of Appeal was filed before the Office of the Collector. Allegedly, by not filing a Notice of Appeal, the running of the reglementary period of fifteen (15) days from notice of the Decision of the Collector within which to file an appeal was not tolled. Respondent Commissioner [petitioner herein] further made as an issue the non-payment of appeal fee of Php3,000.00 within the reglementary period, which allegedly is mandated by Section 3301 to 3304 of the TCCP, as implemented by Customs Administrative Order No. 2-2001 to bolster the denial of the appeal.

On January 3, 2012, petitioner [respondent herein] filed, pursuant to Section 11, of Republic Act No. 1125, as amended, the instant Petition before this Court praying for the following:

1. The Decision of the Commissioner of Customs and the Bureau of Customs be reversed for violating petitioner's rights to substantive due process and equal protection clause of the 1987 Philippine Constitution as well as the Tariff and Customs Code of the Philippines, Civil Code of the Philippines and applicable Supreme Court Decisions; and

2. The duty refund claim of petitioner amounting to Php6,444,827.45 be approved by this Court and an Order be made to the BOC TCC Secretariat headed by the Commissioner of Customs to prepare and issue a TCC for the same amount.

Within the extended period, respondents' [petitioners herein] filed their Answer/Comment, through registered mail on February 21, 2012, which was received by this Court on February 28, 2012. Respondents [petitioners herein] argue that petitioner's [respondent herein] appeal to respondent Commissioner [petitioner herein] was not perfected within the reglementary period; that the timely payment of docket fees is a condition precedent to the perfection of petitioner's appeal within the reglementary period pursuant to Sections 2308, 3301 and 3303 of the Customs Code and Customs Administrative Order (CAO) No. 02-2001; that petitioner's [respondent herein] failure to timely pay the docket fee warranted the dismissal of the appeal; and that petitioner [respondent herein] cannot hide behind his alleged ignorance of the requirement of the payment of the docket fee since ignorance of the law excuses no one from compliance therewith. Respondents [petitioners herein] also object to petitioner's [respondent herein] claim that their right to equal protection of law was violated. Allegedly, petitioner's [respondent herein] situation is different from that of Pan Century Surfactants since the latter has paid the docket fee within the reglementary period, while petitioner [respondent herein] admitted having not paid the docket fee within the reglementary period.

The Pre-trial Conference was held on March 30, 2012. During the said hearing, the parties were granted a period of twenty-days within which to file a joint stipulation of facts and issues for the approval of the Court. On May 15, 2012, the parties filed, through registered mail, their Joint Stipulation of Facts, Issues, Exhibits and Witnesses, which was subsequently approved by this Court on May 31, 2012.

During trial, petitioner [respondent herein] presented both its testimonial and documentary evidence. Petitioner [respondent herein] offered its documentary exhibits on August 1, 2012, and the same were admitted in the Resolution dated September 25, 2012. Respondents [petitioners herein], on the other hand, filed their Manifestation on June 5, 2013 stating that they will no longer be presenting any evidence, which Manifestation was noted in the Resolution dated June 10, 2013.

With the filing of petitioner's [respondent herein] Memorandum on June 26, 2013 and that of respondents [petitioners herein] on August 12, 2013, the instant petition for review was deemed submitted for decision in the Resolution dated August 23, 2013."

In a Decision promulgated on December 18, 2013, the First Division granted respondent's Petition for Review in this wise:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED.** The decision of respondent Commissioner of Customs dated November 25, 2011, which dismissed petitioner's appeal, is **SET ASIDE.** The subject claim for refund is hereby **REMANDED** to the Office the Commissioner of Customs. Respondent Commissioner of Customs is hereby **DIRECTED** to make a determination of petitioner's entitlement to its claimed customs duties and determine the specific amount to which petitioner is entitled to, if any.
>
> **SO ORDERED.**"

Undeterred, petitioners filed their Motion for Reconsideration[7] on January 22, 2014 with respondent's Opposition (to the Motion for Reconsideration).[8] However, said Motion was denied for lack of merit in a Resolution[9] promulgated on February 26, 2014.

On March 21, 2014, petitioners Commissioner of Customs and Bureau of Customs filed a Motion for Extension of Time to File Petition for Review[10] before the CTA Court *En Banc* and the same was granted in a Minute Resolution dated March 25, 2014.

On April 4, 2014, petitioners filed their Petition for Review[11] with respondent's Comment (to the Petition for Review)[12] filed on April 25, 2014. Thereafter, the Court gave due course to the Petition and ordered both parties to submit their simultaneous Memoranda in a Resolution[13] promulgated on May 28, 2014.

Thereafter, the case was submitted for Decision taking into consideration petitioners' Manifestation (In Lieu of Memorandum),[14] filed on July 15, 2014, and respondent's Manifestation, filed on October 22, 2014, stating that its Comment is sufficient to serve as its Memorandum.

Hence, this Decision.

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[7] Division Docket, pp. 669-674.
[8] Ibid, pp. 678-680.
[9] Id, pp. 684-686.
[10] En Banc Rollo, pp. 1-5.
[11] Ibid, pp. 7-27.
[12] Id, pp. 46-48.
[13] *Id*, pp. 50-51.
[14] Id, pp. 52-54.

In this Petition, petitioners raised this sole issue for the resolution of this Court:

> "Whether or not the Commissioner properly dismissed Dole's appeal for non-perfection within the reglementary period."

Petitioners insist that respondent's counsel should have filed a written Notice of Appeal with the Office of the District Collector, pursuant to Section 2313 of the Tariff and Customs Code of the Philippines (TCCP), instead of merely filing a letter appealing the denial of respondent's claim for refund with the Commissioner of Customs. Accordingly, such erroneous procedure taken by respondent was fatal to its claim as it did not toll reglementary period for the perfection of an appeal.

Petitioners also posit that respondent failed to timely pay the corresponding docket fee on time, which is a condition precedent to the consideration of its protest under Section 2308[15] of the TCCP.

After a careful and thorough evaluation and consideration of the records and arguments of both parties, as well as the jurisprudence on the matter, *We* find no merit in the instant Petition.

Respondent's appeal on the denial of its claim for refund with the Commissioner of Customs should not have been dismissed for its failure to file the same within the reglementary period provided under Section 2313[16] of the TCCP. No less than the High Tribunal in the case of *Commissioner of Customs vs. Philippine Phosphate Fertilizer*

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[15] SEC. 2308. Protest and Payment upon Protest in Civil Matters.— When a ruling or decision of the Collector is made whereby liability for duties, taxes, fees, or other charges are determined, except the fixing of fines in seizures cases, the party adversely afftected may protest such ruling or decision by presenting to the Collector at the time when payment of the amount claimed to be due the government is made, or within fifteen (15) days thereafter, a written protest setting forth his objection to the ruling or decision in question, together with the reasons therefor. No protest shall be considered unless payment of the amount due after final liquidation has first been made and the corresponding docket fee, as provided for in Section 3301.

[16] SEC. 2313. Review of Commissioner.— The person aggrieved by the decision or action of the Collector in any matter presented upon protest or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision: Provided, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed. "

Corporation[17] ruled that neither the prescriptive periods nor procedural requirements provided under the Tariff and Customs Code could serve as a bar for the claim for refund of duly registered enterprise under Republic Act No. 7916, or otherwise known as "the Special Economic Zone Act of 1995.

> "Consideration of the general philosophy and thrust of the EPZA Law cannot be evaded. The export processing zone is intended to be a viable commercial, industrial and investment area. The enunciated policy of the EPZA Law is to encourage and promote foreign commerce as a means of making the Philippines a center of international trade; strengthening our export trade and foreign exchange position; hastening industrialization; reducing domestic unemployment; and accelerating the development of the country, by establishing export processing zones in strategic locations in the Philippines.
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> As noted by the CTA, the basic policy in establishing export processing zones is to attract enterprises, especially foreign investors, who will be manufacturing products primarily for export and be able to do so without their supplies and raw materials entering, and the export products leaving, the Philippine territory within the context of customs and revenue regulations. From a macro-perspective though, export processing zones are not intended to solely benefit investors. These zones are scattered throughout the country in remote areas and have the patent benefit of creating employment opportunities within their localities. It is the presence of tangible tax benefits attached to these zones which make them viable as investment locations, areas which ordinarily would be overlooked.
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> The incentives offered to enterprises duly registered with the PEZA consist, among others, of tax exemptions. These benefits may, at first blush, place the government at a disadvantage as they preclude the collection of revenue. Still, the expectation is that the tax breaks ultimately redound to the benefit of the national economy, enticing as they do more enterprises to invest and do business within the zones; thus creating more employment opportunities and infusing more dynamism to the vibrant interplay of market forces.

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[17] G.R. No. 144440, September 1, 2004.

Section 17 of the EPZA Law particularizes the tax benefits accorded to duly registered enterprises. It states:

> SEC. 17. *Tax Treatment of Merchandize in the Zone.* – (1) Except as otherwise provided in this Decree, foreign and domestic merchandise, raw materials, **supplies, articles, equipment, machineries, spare parts and wares of every description**, except those prohibited by law, brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise **or used whether directly or indirectly in such activity, shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the following provisions of law to the contrary notwithstanding**.

The cited provision certainly covers petroleum supplies used, directly or indirectly, by Philphos to facilitate its production of fertilizers, subject to the minimal requirement that these supplies are brought into the zone. The supplies are not subject to customs and internal revenue laws and regulations, nor to local tax ordinances. It is clear that Section 17(1) considers such supplies exempt even if they are used indirectly, as they had been in this case.

Since Section 17(1) treats these supplies for tax purposes as beyond the ambit of customs laws and regulations, the arguments of the Commissioner invoking the provisions of the Tariff and Customs Code must fail. Particularly, his point that the importation of the petroleum products by Petron was deemed terminated under Section 1202 of the Tariff and Customs Code, and that the termination consequently barred any future claim for refund under Section 1603 of the same law is misplaced and inconsequential. Moreover, the cited provisions of the Tariff and Customs Code if related to Section 17(1) of the EPZA Law would significantly render the argument strained and, if upheld, obviate many of the benefits granted by Section 17(1), for the provision does not limit the tax exemption only to direct taxes. Following the Commissioner's interpretation, any duly registered enterprise sought to be held liable for the controverted custom's duty because the importer had shifted the duty to the buyer would forever be precluded from challenging the duty, which it is not in the first place obliged to pay under the law. Hand in hand with its patent noxiousness to the spirit of the EPZA Law, the approach calls for the unwarranted application of the Tariff and Customs Code to investors and players in the zones, which under the EPZA Law are beyond the reach of domestic customs and tax laws, as well as regulations.

Neither would the prescriptive periods or procedural requirements provided under the Tariff and Customs Code serve as a bar for the claim for refund. The holding of the CTA on this point is illuminating:

> Contrary to the allegation of the Respondent that Section 17(1) does not provide for duty and tax exemption privilege, this Court disagrees. That phrase shall not be subject to customs and internal revenue laws and regulations nor to local tax ordinances, the provisions of law to the contrary notwithstanding cannot be interpreted in any other manner than to mean that merchandise or supplies brought into the zone are exempt from customs duties and taxes. **The incentive given under Section 17(1) is broader than a mere tax exemption. The phrase is so broad to include not only the exemption from customs duties and taxes but everything required in the enforcement of the customs and internal revenue laws save on the exceptions and conditions specified in the EPZA law itself.** Considering that the customs and internal revenue laws are primarily enacted to impose duties and taxes, the phrase cannot be interpreted to exclude these impositions. More so, the phrase will also include exemption from other rules and regulations which are normally followed in the discharge of importation such as the filing of import entries, examinations and other requirements attendant to the importation of goods into the country.

Even our recent ruling in *Nestle Philippines, Inc. v. Court of Appeals,* to the effect that the claim for refund of customs duties in protestable cases may be foreclosed by the failure to file a written protest, is not *apropos* in the case at bar because petitioner therein was not a duly registered enterprise under the EPZA Law and thus not entitled to the exemptions therein.

This leads to another question well-worth resolving — **what is the prescriptive period which a duly registered enterprise should observe in applying for a refund to which it is entitled under the EPZA Law? The EPZA Law itself is silent on the matter, and the prescriptive periods under the Tariff and Customs Code and other revenue laws are inapplicable, by specific mandate of Section 17(1) of the EPZA Law. This does not mean though that prescription will not lie, as the Civil Code provisions on *solutio indebiti* may find application. The Civil Code is not a customs and internal revenue law. The Court has in the past sanctioned the application of the provisions on *solutio indebiti* in cases when taxes were collected thru error or mistake. *Solutio indebiti* is a quasi-contract, thus the claim for refund must be commenced within six (6) years from date of payment pursuant to Article 1145(2) of the New Civil Code. Clearly then, Philphos's right to refund has not yet prescribed.**" *(Emphases Ours)*

Applying the foregoing doctrine, the Court in Division, therefore, aptly ruled:

"Apparently, respondent Commissioner's denial of the claim on mere technicalities is erroneous as neither the prescriptive periods nor procedural requirements provided under the Customs laws serve as a bar for claim for refund of duties passed-on to a duly-registered PEZA enterprise pursuant to the pronouncement in Philphos.

Considering that the present claim involves customs duties passed-on by its supplier Petron Corporation for petitioner's purchases of petroleum products, which is a form of an indirect tax, and consistent with existing jurisprudence, the party to which the economic burden of the tax is shifted is entitled to claim for refund of tax where the law clearly grants the said party an exemption from both direct and indirect taxes. More importantly, since the

> PEZA law clearly provides for tax exemption anent the supplies brought into the zone, *i.e., the merchandise, raw materials, supplies, articles, equipment, machineries, spare parts and wares of every description brought into the zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity, shall not be subject to Customs and internal revenue laws and regulations,* the claim for refund of petitioner deserves consideration by respondent Commissioner."[18]

With regard to the issue of non-payment of docket fees, suffice it to say that the same has already been passed upon in the Assailed Resolution in this wise:

> "PD No. 66 and Executive Order No. 226 (Omnibus Investment Code) provide in no uncertain terms that supplies brought into the Zone to be sold, stored, broken up, repacked, assembled, installed, sorted, cleaned, graded, or otherwise processed, manipulated, manufactured, mixed with foreign or domestic merchandise or used whether directly or indirectly in such activity, shall not be subject to customs and internal revenue laws and regulations.
>
> It is erroneous for respondents to insist on the application of the TCCP to claims for refund that involve passed-on customs duties arising from purchases of supplies brought into the ECOZONE and used, directly or indirectly, by a duly-registered PEZA enterprise. In *Philphos*, the Supreme Court categorically ruled that the prescriptive periods under the TCCP and other revenue laws are inapplicable on claims for refund of passed-on customs duties arising from purchases of supplies brought into the ECOZONE and used, directly or indirectly, by a duly-registered PEZA enterprise, and that the prescriptive periods or procedural requirements under the TCCP should not serve as a bar for the claim for refund. It further held that said claims for refund of passed-on customs duties must be commenced within six (6) years from the date of payment pursuant to Section 1145 (2) of the New Civil Code.

[18] Page 10 and 11 of the Assailed Decision, Annex "A" to the Petition for Review, *En Banc* Rollo, pp. 38-39.

> As the Supreme Court has spoken on the matter, this Court has no other option but to uphold and apply the same. The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiceable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings."

Finding no reversible error, *We* affirm the Assailed Decision dated December 18, 2013 and the Assailed Resolution dated February 26, 2014 both rendered by the CTA First Division.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice